

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

LOUIS PHILLIPUS MEYER and
LYNN MEYER,

Debtors.

CASE NO. C14-0869JLR

Bankruptcy No. 14-S009

Adversary Case No. 13-1036-KAO

DZ BANK AG DEUTSCHE
ZENTRAL-
GENOSSENSCHAFTBANK,
FRANKFURT AM MAIN, NEW
YORK BRANCH,

Appellant,

v.

LOUIS PHILLIPUS MEYER and
LYNN MEYER,

Appellees.

ORDER DENYING MOTION TO
DISMISS OR LIMIT APPEAL

Before the court is Defendants/Appellees Louis and Lynn Meyer's motion to
dismiss or limit this bankruptcy appeal. (Mot. (Dkt. # 5).) In the motion, the Meyers ask

1 the court to dismiss this appeal or substantially limit its scope because Plaintiff/Appellant
2 DZ Bank AG Deutsche Zentral-Genossenschaftsbank, Frankfurt AM Main, New York
3 Branch (“DZ Bank”) filed an untimely notice of appeal. (*See id.*)

4 Under Federal Rule of Bankruptcy Procedure 8002, a notice of appeal must be
5 filed within 14 days after entry of judgment. Fed. R. Bankr. P. 8002(a). However, “[i]f
6 any party makes a timely motion” to alter or amend the judgment, for a new trial, or for
7 other relief from a judgment or order, this 14 day period runs anew from “the entry of the
8 order disposing of the last such motion outstanding.” Fed. R. Bankr. P. 8002(b). In other
9 words, a party may await the conclusion of post-judgment motion practice before filing a
10 notice of appeal. *See id.* Once all timely post-judgment motions are decided, either party
11 has 14 days to file a notice of appeal. *See id.*

12 In this case, DZ Bank filed two post-judgment motions before filing its notice of
13 appeal. The bankruptcy judge entered judgment on February 28, 2014. (Stern Decl.
14 (Dkt. # 5-1) at 4.) On March 14, 2014, 14 days later, DZ Bank filed a timely motion for
15 reconsideration and the Meyers filed a motion for relief from judgment. (*Id.* at 5, 6.)
16 Nearly two months later, on May 9, 2014, the bankruptcy judge entered orders on the two
17 post-judgment motions, granting the Meyers’ motion, denying DZ Bank’s motion, and
18 entering amended findings of fact and conclusions of law and an amended judgment. (*Id.*
19 at 7-10.) Thus, on May 9, 2014, the 14-day appeals clock began to run again pursuant to
20 Rule 8002(b). *See* Fed. R. Bankr. P. 8002(b). After 14 days passed, on May 23, 2014,
21 DZ Bank filed not a notice of appeal but a second motion for reconsideration. (*Id.* at 11.)
22 This motion for reconsideration requested relief from the amended judgment. (*Id.*) The

1 bankruptcy judge denied DZ Bank's motion seven days later on May 30, 2014, and DZ
2 Bank filed a notice of appeal 14 days after that on June 13, 2014. (*Id.* at 12-13.)

3 The court must now decide whether the notice of appeal was timely. The Meyers
4 argue that it was not because it was filed more than 14 days after the bankruptcy judge
5 ruled on DZ Bank's first motion for reconsideration; they assert that DZ Bank's second
6 motion for reconsideration did not toll the 14-day appeals clock. (*See Mot.* at 2-3.) DZ
7 Bank argues that its second motion for reconsideration tolled the appeals clock and that
8 therefore its notice of appeal was timely. (*Resp.* (Dkt. # 8) at 4-6.)

9 This issue is governed by settled law. As a general matter, a party may not use
10 Rule 8002(b) to indefinitely toll the appeals clock by filing post-judgment motion after
11 post-judgment motion. *Wages v. I.R.S.*, 915 F.2d 1230, 1234 n.3 (9th Cir. 1990); *In re*
12 *Brewster*, 243 B.R. 51, 56 (9th Cir. BAP 1999) (citing *Aybar v. Crispin-Reyes*, 118 F.3d
13 10, 14 (1st Cir. 1997)).¹ As such, a second motion for relief from or reconsideration of
14 the same judgment will not reset the appeals clock. *Brewster*, 243 B.R. at 56; *see also In*
15 *re Stangel*, 68 F.3d 857, 859 (5th Cir. 1995). However, the situation is different if the
16 court amends the underlying judgment. *Wages*, 915 F.2d at 1234 n.3; *Herrington v. Cnty.*
17 *of Sonoma*, 706 F.2d 938, 939 (9th Cir. 1983); *United States v. Geophysical Corp. of*
18 *Alaska*, 732 F.2d 693, 701 (9th Cir. 1984). If the judgment is amended, a second post-
19 judgment motion will toll the appeals clock if the change in the amended judgment was

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21 ¹ In applying Federal Bankruptcy Rule 8002(b), the Ninth Circuit has held that courts
22 should look to cases interpreting the Rule's counterpart in the Federal Rules of Appellate
Procedure, Rule 4(a)(4). *In re Sweet Transfer & Storage, Inc.*, 896 F.2d 1189, 1192 (1990). The
court will therefore rely on Rule 4(a)(4) cases here without further comment.

1 “material” as opposed to merely the correction of a “true clerical error.” *Geophysical*
2 *Corp.*, 732 F.2d at 701.

3 Here, the second post-judgment motion tolled the appeals clock. *See id.* A change
4 to a judgment is “material” if it affects the rights of the parties or the decision to appeal.
5 *Id.* A change is not material if it merely corrects a clerical error, such as a mistakenly-
6 entered date or other clerical error. *Id.* (citing *Cnty. of Imperial v. United States*, 348
7 F.2d 904, 905 (9th Cir. 1965)). In this case, the amended judgment substantially affected
8 the rights of the parties and may have impacted DZ Bank’s decision to appeal. Most
9 notably, the amended judgment reduced the amount of the judgment against the Meyers
10 by more than half, from \$385,000.00 to \$123,200.00. (*See* 5/9/14 Bankr. Order (Dkt.
11 # 1) at 43-51.) The court also corrected an erroneous conclusion of law, concluding that
12 it had committed manifest error the first time around. (*Id.*) In short, the court corrected
13 its reasoning and arrived at a different damages amount. (*See id.*) These are material
14 changes that affect the rights of the parties and could affect the decision to appeal. *See*
15 *Geophysical Corp.*, 732 F.2d at 701. Neither of them could fairly be classified as
16 corrections of “clerical errors.” *See id.* As such, DZ Bank’s motion for reconsideration
17 of the amended judgment tolled the appeals clock, which began to run anew after the
18 motion was resolved. *See id.*; *Wages*, 915 F.2d at 1234 n.3; *Herrington*, 706 F.2d at 939.

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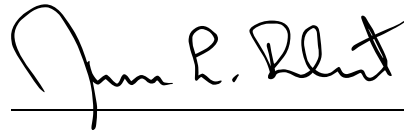
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1 For these reasons, DZ Bank's notice of appeal was timely. The Meyers' motion to
2 dismiss or limit this appeal is DENIED.

3 Dated this 28th day of August, 2014.

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JAMES L. ROBART
United States District Judge